IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

WP(C).No. 396 of 2007(V)

C.A.584/06-07 IN E.P.228/03 IN LAR 93/94 OF SUB JUDGE, MUVATTUPUZHA

PETITIONER:

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1. K.J.ANTONY, THOPPIL HOUSE,
   OLIYAPURAM KARA, THIRUMARADY VILLAGE.

2. ULAHANNAN GEORGE,
   KORANDIPPILLIL HOUSE, OLIYAPURAM KARA,
   THIRUMARADY VILLAGE.

BY ADV. SMT.SANTHAMMA ISSAC

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
DISTRICT COLLECTOR, ERNAKULAM.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.396 OF 2007

Dated 24th January 2007

J U D G M E N T

First petitioner is the claimant in L.A.R.93/94 and second petitioner is the claimant in L.A.R.62/94 on the file of Sub court, Muvattupuzha. As per common award dated 29/10/1998 Sub court granted enhanced compensation. Respondent/petitioner deposited the amount. First petitioner filed cheque application No.584/06-07 in E.P.228/03 in L.A.R.93/94 to withdraw the amount. Under Ext.P4 order learned Sub Judge dismissed the cheque application accepting the statement filed by judgment debtor and rejecting the statement submitted by decree holder. This petition is filed under Article 227 of Constitution of India challenging Ext.P4 order and for a direction to Sub Judge to issue a cheque as prayed for.

2. Learned counsel appearing for petitioner and Government Pleader were heard.

3. As per Ext.P4 order learned Sub Judge accepted the statement of judgment debtor and rejected

the statement of decree holder without showing reasons. As rightly pointed out by learned counsel appearing for petitioner claimant is entitled to get interest on solatium as well as for the amount granted under Section 23 (1A). Even if it has not been specifically granted in the award, unless that question has been considered and negatived by the Land Acquisition Court, claimant is entitled to the interest on that amount. Award shows that this aspect has not been considered by Land Acquisition court and claim for interest on these amounts was not rejected. Ext.P4 order is therefore quashed.

4. Learned Sub Judge is directed to reconsider the question in the light of the decision of Apex court in **Gur Preet Singh v. Uninon of India (2006 (8) SCC 457)** and pass appropriate order in accordance with law. Learned Sub Judge is also to consider the question whether any income tax is liable to be deducted, if it is an agricultural property.

Writ petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.